OSGOODE HALL LAW JOURNAL

BOARD OF EDITORS

Editor-in-Chief
J. W. MIK

Assistant Editor
JOHN D. MORAND

Casenote Editor
THOMAS G. HEINTZMAN

Book Review Editor
ROBERT G. WITTERICK

Supreme Court Review
J. W. MIK

Business Manager
E. A. PETERS

Faculty Advisors
R. J. S. GRAY, B.A., LL.B., LL.M.
H. W. ARTHURS, B.A., LL.B., LL.M.
G. E. PARKER, LL.B., LL.M.

INDEX

LEADING ARTICLES

LA MAXIME *RES IPSA LOQUITUR* ET SON APPLICATION DANS LA JURISPRUDENCE QUEBECOISE. *René La Perrière et Michel Lésperance* 1

MORE THOUGHTS ON LOSS DISTRIBUTION. *John G. Fleming* 161

THE MOTOR CAR AND THE LAW. *The Hon. J. C. McRuer, Q.C., LL.D.* 54

POLICE POWER AND CIVIL LIBERTIES. *J. L. Clendenning.* 174

SOME ASPECTS OF THE CANADIAN BILL OF RIGHTS: AN AMERICAN VIEW. *Roger A. Pauley.* 36

THE STANDARD OF CARE IN MALPRACTICE CASES. *Irvin Sherman.* 222

STATISTICAL ANALYSIS OF [1965] S.C.R. *Irvin Sherman.* 276

STRICT LIABILITY, NUISANCE, AND LEGISLATIVE AUTHORIZATION. *Allen M. Linden.* 196

THE SUPREME COURT OF CANADA: THE QUIET COURT IN AN UNQUIET COUNTRY. *Ronald J. Cheffins.* 259

TOTEM AND TABU IN EXPORT TRADE. *Norman E. Holly.* 106

THE TRUST FUND PROVISION OF THE MECHANICS' LIEN ACT. *J. W. Mik.* 77

AUTHORS OF LEADING ARTICLES

CHEFFINS, Ronald J.	The Supreme Court of Canada: The Quiet Court in an Unquiet Country	259
CLENDENNING, J. L.	Police Power and Civil Liberties	174
FLEMING, John G.	More Thoughts on Loss Distribution	161
HOLLY, Norman E.	Totem and Tabu in Export Trade	106
LA PERRIÈRE, René	La Maxime *Res Ipsa Loquitur* dans la Jurisprudence Quebecoise	1
LESPÉRANCE, Michel	La Maxime *Res Ipsa Loquitur* dans la Jurisprudence Quebecoise	1
LINDEN, Allen M.	Strict Liability, Nuisance and Legislative Authorization	196
McRUER, The Hon. J. C. Q.C., LL.D.,	The Motor Car and the Law	54
MIK, J. W.	The Trust Fund Provision of the Mechanics' Lien Act	77
PAULEY, Roger A.	Some Aspects of the Canadian Bill of Rights: An American View	36
SHERMAN, Irvin	The Standard of Care in Malpractice Cases	222
SHERMAN, Irvin	Statistical Analysis of [1965] S.C.R.	276

BOOK REVIEWS

CARROTHERS, A. W. R., Collective Bargaining Law in Canada. Toronto: Butterworth, 1965. (Robert Witterick) 147

FREIDMAN, WOLFGANG, Law in a Changing Society. Harmondsworth, England: Penguin Books, 1964. (J. W. Mik) 156

FRIEDLAND, MARTIN L., Detention Before Trial. Toronto: University of Toronto Press, 1965. (Graham E. Parker) 153

KAPLAN, JOHN, The Trial of Jack Ruby. London: Colier-Macmillan, 1965. (Graham E. Parker) 245

KUNKEL, WOLFGANG, An Introduction to Roman Legal and Constitutional History. Oxford: Clarendon Press, 1966. (J. W. Mik) 252

LaBRIE, F. H., The Principles of Canadian Income Taxation. Toronto: CCC Ltd., 1965. (H. Crawford Purdy) 243

SMEATON, RONALD C., The Horsburgh Affair: Disciple or Deviate? Toronto: Baxter, 1965. (Brian Bellmore) 151

WALTZ, JOHN R., The Trial of Jack Ruby. London: Collier-Macmillan, 1965. (Graham E. Parker) 245

SUBJECT MATTER INDEX

ADMINISTRATIVE LAW
Canadian Bill of Rights 287
immigration—deportation 281
imported goods—classification 350

BANKRUPTCY
assignment of wages 311

COMBINES
anti-trust provisions in the export trade 106

CONSTITUTIONAL LAW
jurisdiction of local B.C. Supreme Court judges in divorce 289
zoning by-laws and federal elections 299

CONTRACTS
misrepresentation 128
rescission 128

CRIMINAL LAW
compellability of accused at inquest 317
criminal process at Jack Ruby's trial ..... (book rev) 245
pre-detention ..... (book rev) 153
testimony of juveniles ..... (book rev) 151

EVIDENCE
compellability of accused at inquest 317

HUMAN RIGHTS
Canadian Bill of Rights 36
CANADIAN BILL OF RIGHTS, THE (text) 51
freedom of religion 46
police power and civil liberties 174
right to counsel 41, 336

LABOUR LAW
collective bargaining ..... (book rev) 147
picketing—secondary 122

MATRIMONIAL RELATIONS
jurisdiction of local B.C. Supreme Court judges in divorce 289
wife's equity in the matrimonial home 133

REALTY
mechanics' liens—trust fund provision 77
mortgages—conflict between option to purchase and right to redeem 141

TAXATION
principles of Canadian income taxation ..... (book rev) 243
right to counsel at taxation hearing 336

TORTS
assumption of risk 65
authorization—legislative 196
care—standard in malpractice cases 222
doctrine of Rylands v. Fletcher 59
duties in malpractice cases 235
immunities—legislative 199
—permissive 203
liability to gratuitous passengers 325
liability—joint and severable 332
—strict 56
—vicarious 164
loss allocation 167
loss distribution 161
master and servant 325
motor vehicles—death and disability benefits 73
motor vehicles—negligence 64
res ipsa loquitur—application in Quebec law 1
standard of proof 65
workmen's compensation 60-64

TRUSTS
religious discrimination 113, 115

WILLS
testamentary capacity 354

CASES CITED

(Case comments in heavy print)

A

Allen, In re 114
Angus v. London, Tilbury & Southland Railway Company 13
Attorney-General of Ontario v. Attorney-General of Canada 296
Attorney-General of Ontario and Display Services Co. v. Victoria Medical Building Ltd. 297, 298
Attorney-General of Quebec v. Begin 45
Autobus Saguenay v. Riverin & Desmeulles 28

B

Bank of Montreal v. Township of Sidney 80, 82, 100
Barry v. Butlin 356-358
Batary v. Attorney-General of Saskatchewan 317
Bendall v. McWhirter 133, 136
Bennett & White v. Van Reeder 124
Bilsland v. Bilsland 292
Board v. Board 293
Bolton v. Stone 8
Bye v. Holy Rosary Parish (Thorold) Credit Union Limited 314, 316
Byrne v. Boadle 3, 9

C

Canada Lift Truck Co. Ltd. v. D.M.N.R. 353
Canadian Insurance Act, 1910, In re 266
Canadian Pittsburgh Industries Ltd. v. Bank of Nova Scotia 93, 95
Cardin v. Cité de Montreal 25
Carmiel v. Plotnick 15, 33
Cassidy v. Minister of Health 6
Castelein v. Boux 82
Christie v. Griggs 8, 12
Citizens Insurance Co. v. Parsons 267
City of Montreal v. Watt & Scott 15
Clark v. Supertest Petroleum Co. 145
Clayton v. Ramsden 114
Cogswell v. New York, N. H. and H. R. Railway Company 210
Co-operators Insurance Association v. Kearney 315, 328, 330, 331
County Courts of British Columbia, In re 297
Cunningham v. Tomey Homma 50

D

Dallas v. Hinton & Home Oil Distributors Ltd. 330, 331
Dame Ducharme v. Royal Victoria Hospital 21, 31
Davy v. Morrison 225
De Marney, Re 314, 315
Demers v. Demers 16, 29, 30
Deputy-Minister of National Revenue v. J. M. E. Fortin Inc. 352
Deputy-Minister of National Revenue v. McMillan & Bloedel (Alberni) Ltd. 350
Desautels v. Provincial Transport 28-30
Dominion Electric Protection Co. v. Leopold Beaudoin Con. Co. 103

Dominion Engineering Works Ltd. v. D.M.N.R. 351-353
Donoghue v. Stevenson 59
Duke of Westminster v. C.I.R. 349

E

Easson v. London & N.-Eastern Ry. Co. 4, 6, 8, 12
Edwards v. Bairstow 352
Elder & Elder v. King 16, 22, 32
Errington v. Errington 135, 136
Errington v. Minister of Health 343
Escobedo v. Illinois 45, 46, 191

F

F. & B. Transport v. White Truck Sales Manitoba Ltd. 128, 131
Falsetto v. Brown 334, 335
Fonthill Lumber Ltd. v. Bank of Montreal 87, 92
Fosbrooke-Hobbes v. Airwork Ltd. 4
Fraser v. The Vancouver General Hospital 231
Furniss v. Fitchett 237

G

G. v. C. & De Coster 22, 27, 28, 31
Galashiels Gas Co. Ltd. v. O'Donnell (or Millar) 334
Gaudreault v. Coté 16, 21, 24, 29, 33
Gendron v. Dupré 20
General Dry Batteries of Canada Ltd. v. Brigenshaw 123
Geo. W. Crothers v. Bank of Nova Scotia 95
Gibbons v. Harris 229
Gosselin v. The King 319
Grant v. Australian Knitting Mills 13, 59
Guay v. Lafleur 39, 40, 336, 342, 343, 347, 349

H

Hallett's Case 84
Har-A-Mac Construction Co. Ltd. v. Harkness 124
Harrison v. Toronto Motor Car Ltd. & Krug 327-331
Harvey v. Dunlap 59
Heather Hill Appliances v. McCormack et al 122, 125-127
Hersees of Woodstock Ltd. v. Goldstein 122, 125
Hinchcliffe v. Sheldon 184
Hoar v. Wallace 330, 331
Howard Savings Inst. v. Peep 120
Hunt, Re 313

I

Income Tax Special Purposes Commissioners v. Pemsel 118
Irvine v. Metropolitan Transport Co. 335

J

Jarvis v. International Nickel Co. Ltd. 229, 231, 232
John M. M. Troup Ltd. v. Royal Bank of Canada 92, 93, 95
John Ritchie Ltd. v. Canadian Bank of Commerce 88
John Ritchie Ltd. v. Canadian Bank of Commerce (Ont. C.A.) 96
Jones, Re, ex parte Nichols 314

K

King v. Michael Faraday and Partners Ltd. 315, 316
Knightsbridge Estates Trust v. Byrne 145
Koechlin v. Waugh and Hamilton 182, 188
Kreglinger v. New Patagonia Meat and Cold Storage Co. Ltd. 144

L

L & D Cartage and Development Ltd., Re, v. Sterling Construction Co. Ltd. 82
La Fond v. City of Detroit 120
Labour Relations Board of Saskatchewan v. John East Iron Works 297
Lachance v. B. 23
Langlais v. S. M. la Reine 23
Lanphier v. Phipos 225
Lind, Re 314, 316
Local Government Board v. Arlidge 339, 347
Lochgelly Iron & Coal Co. Ltd. v. M'Mullan 334
London Passenger Transport Board v. Upson 334
Losee v. Buchanan 59
Lundy v. Niagara Falls Railway Employees Credit Union 312, 313
Lysaght, In re; Hill v. The Royal College of Surgeons 113

M

MacGregor v. Ryan 354
Mahon v. Osbourne 4
Male v. Hopmans 234, 237
Marshall v. Rogers 236
McArthur v. Dominion Cartridge Co. 23, 30
McKay v. The Queen 299, 300, 302, 303, 305, 307, 310
McKenzie v. Royal Bank of Canada 130
The Merchant Prince 3, 9, 13
Minneapolis-Honeywell Ltd. v. Empire Brass Mfg. Co. Ltd. 78, 82, 84, 94, 96 100
Montreal Tramways v. Léveillé 19, 24
Moore and Texaco Canada Ltd., Re 141, 143, 146
Morris v. Winsbury-White 7
Murphy v. Lamphier 360
Murrin v. Janes 236

N

National Provincial Bank v. Ainsworth 133, 134, 140
Nipissing Hotel v. Hotel and Restaurant Employees etc. Union 124
Nitroglycerine Case, The 59
Norcross Bros. v. Gohier 15

O

O'Flaherty v. McKinlay 130
Ottawa Construction Ltd. v. Barnhart-Cochrane Ltd. et al 143
Ottawa Electric Co. v. Crépin 4, 12, 16

P

Parent v. Lapointe 16, 20, 29, 30
Partington v. Attorney-General 349
Patchett v. Pacific Great Eastern Railway Company 125

Pilkington Glass Ltd. v. Canadian Imperial Bank of Commerce 94, 96
Priestly v. Fowler 329
Public Inquiries Act, Re 323
Putherford Construction Co. Ltd., Re 101

Q

Quebec Railway, Light, Heat & Power Co. v. Vandry 15

R

R. v. Barnes 317, 320-322
R. v. Brunner 104
R. v. Bush 291
R. v. Carroll 183
R. v. Gonzales 39-41
R. v. Labour Relations Board, ex parte Fredericton 177
R. v. Leach ex parte Bergsma 47, 49
R. v. O'Connor 43-45
R. v. Pease 201
R. v. Semeniuk 182
R. v. Steeves 41-45
Read v. J. Lyons & Co. Ltd. 60
Rebrin, Re 287
Reference re Adoption Act etc. 291, 297
Reference re Alberta Statutes 263, 299, 305
Regan, Re 320
Richards v. Coté 41
Robertson & Rosetanni v. The Queen 46, 47
Robertson Yates Corp. Ltd. v. Fitzgerald 122, 125-127
Robitaille, Re; Holy Rosary Parish (Thorold) Credit Union Limited v. Premier Trust Company 311-316
Roe v. Minister of Health 8
Rousseau v. Bennett & Nutbrown 21, 25, 27
Royal Bank of Canada v. Blick, Wilson et al 80
Rylands v. Fletcher 59, 60, 201, 202

S

St. Helens Colliery Co. v. Hewitson 330
St. John v. Frazer 339
St. Père v. Morin & Colangelo 22, 27
Samejima v. The King 286
Scott v. London & St. Katherine Docks Co. 3, 9, 16
Scott v. Scott 292
Scott and Scott v. Riehl and Shumak 101
Sevigny v. Boismenu 23
Shawinigan Carbide Co. v. Doucet 15
Shell Oil of Canada Ltd. v. Eagle Star Insurance Co. 24
Sheppard v. Sheppard 291
Shiffman v. Order of St. John of Jerusalem 60
Sinz v. Owens 230
Smith v. Auckland Hospital Board 237, 238
Smith Brothers v. Jones 124
Southport Corp. v. Esso Petroleum Co. Ltd. 12, 13
Standard Electric Co. v. Royal Bank of Canada 91
Steinberg's Ltd. v. Dame Labelle 24, 32

Sterling Trusts Corporation et al v. Postma and Little 332, 333
Stuart v. Bank of Montreal 264
Supreme Court Amendment Act, 1964 (B.C.), In re; Attorney-General of British Columbia v. McKenzie 289
Sutton v. Sadler 357
Switzman v. Elbling and A.-G. of Quebec 263, 302, 307

T

Tailby, Re, Tailby v. The Official Receiver 314, 316
Taylor v. Gray 227
Thomson v. Clydesdale Bank Limited 87
Town v. Archer 226
Turcotte v. Turcotte 22
Tyrrell v. Painton 358, 360

U

United Motor Service v. Hutson 4, 13

V

Van Wyk v. Lewis 227
Vaughan v. Taff Vale Railway Co. 201
Vezina v. D. 23, 28, 31
Violi v. Minister of Citizenship and Immigration 281, 282, 287

W

Wagon Mound, The 166
Wakelin v. London & S.-Western Ry. Co. 6, 10
Walter Davidson Co. Ltd., Re 101
Watts v. Watts 292
Weaver v. Ward 56, 65
White v. Munn Motors Ltd. 130
Whitehead v. Hunter 224
Williams v. Aritocratic Restaurants 122, 124, 125
Williams & Williams, Re 38
Wilson v. Swanson 233
Wing v. London General Omnibus Co. 60
Wolfe v. Robinson 324

X

X. v. Mellen 16, 19, 34
X. v. Rajotte 19, 26

Y

Yeoman Credit Ltd. v. Apps 130, 131

Z

Zinkler v. Robinson 227